

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE COMPANY,
d/b/a NORTHERN STEVEDORING & HANDLING,
and NORTH STAR TERMINAL & STEVEDORE COMPANY,
d/b/a Northern Stevedoring & Handling, on
its own behalf,
Plaintiffs,

and

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a Marathon
Fuel Service, and SHORESIDE PETROLEUM, INC.,
d/b/a Marathon Fuel Service, on its own
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER ROCK
PRODUCTS, INC.; UNITED STATES FIDELITY
AND GUARANTY COMPANY; and ROBERT A. LAPORE,
Defendants.

Case No. A98-009 CIV (HRH)

DEPOSITION OF BARBARA DIECKGRAEFF

Pages 1 - 46 (inclusive)

November 29, 2005

9:05 a.m.

Taken by the Defendants

at

Oles Morrison Rinker & Baker LLP
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501

Reported by: Caren S. Carlson
Registered Professional Reporter

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiffs:</p> <p>3 MR. MICHAEL W. SEWRIGHT, ESQ.</p> <p>4 Burr Pease & Kurtz</p> <p>5 810 North Street</p> <p>6 Anchorage, Alaska 99501</p> <p>7 (907) 265-5704</p> <p>8 For Intervening Plaintiffs:</p> <p>9 MR. STEVEN J. SHAMBUREK, ESQ.</p> <p>10 Law Office of Steven J. Shamburek</p> <p>11 425 G Street, Suite 630</p> <p>12 Anchorage, Alaska 99501</p> <p>13 (907) 522-5339</p> <p>14 For Defendants, Nugget Construction</p> <p>15 Company, Inc., and USF&G:</p> <p>16 MR. TRAEGER MACHETANZ, ESQ.</p> <p>17 MS. GLORIA HO, ESQ.</p> <p>18 Oles Morrison Rinker & Baker, LLP</p> <p>19 745 Fourth Avenue, Suite 502</p> <p>20 Anchorage, Alaska 99501</p> <p>21 (907) 258-0106</p> <p>22 For Defendant, USF&G:</p> <p>23 MR. HERBERT A. VIERGUTZ, ESQ.</p> <p>24 Barokas Martin & Tomlinson</p> <p>25 1029 West Third Avenue, Suite 280</p> <p>Anchorage, Alaska 99501</p> <p>(907) 276-8010</p> <p>Also Present:</p> <p>Mr. Doug Lechner</p> <p>Mr. John Smithson</p> <p>Taken by:</p> <p>Caren S. Carlson</p> <p>Registered Professional Reporter</p> <p>BE IT KNOWN that the aforementioned deposition was taken at the time and place duly noted on the title page, before Caren S. Carlson, Registered Professional Reporter and Notary Public within and for the State of Alaska.</p>	<p style="text-align: right;">Page 4</p> <p>1 Q. During the course of this deposition, since</p> <p>2 she's typing, I'll try not to talk over your questions,</p> <p>3 will you please -- I'll try not to talk over your</p> <p>4 answers, will you please try not to talk over my</p> <p>5 questions?</p> <p>6 A. Yes.</p> <p>7 Q. From time to time I may ask you a question that</p> <p>8 is not very clear. Will you let me know if you don't</p> <p>9 understand my question so I can try to make it clearer?</p> <p>10 A. Yes, I will.</p> <p>11 Q. From time to time your attorney may pose an</p> <p>12 objection during this deposition. Unless he instructs</p> <p>13 you not to answer, you are to go ahead and answer my</p> <p>14 question. Do you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You have been designated for this</p> <p>17 deposition as a 30(b)(6) deponent. Has that been</p> <p>18 explained -- has the significance of that been explained</p> <p>19 to you by your counsel?</p> <p>20 A. What's a 30(b)(6)?</p> <p>21 Q. Okay. What that means is we ask for someone who</p> <p>22 is most knowledgeable about certain items on behalf of</p> <p>23 Metco and you are the person who is selected to fulfill</p> <p>24 that role.</p> <p>25 A. All right.</p>
<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS.</p> <p>2 BARBARA DIECKGRAEFF,</p> <p>3 called as a witness herein, being first duly sworn to</p> <p>4 state the truth, the whole truth and nothing but the</p> <p>5 truth by the Notary, testified under oath as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MACHETANZ:</p> <p>8 Q. Ms. Dieck -- is it Deegraeff?</p> <p>9 A. It's Dieckgraeff.</p> <p>10 Q. Dieckgraeff. My name is Traeger Machetanz. I</p> <p>11 can appreciate a difficult pronounced name.</p> <p>12 This is the opportunity I have to ask you some</p> <p>13 questions about the lawsuit that you're in with Spencer</p> <p>14 Rock Products and Nugget and its surety. Have you ever</p> <p>15 had your deposition taken before?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Okay. This is a time where I'll ask you</p> <p>18 questions and then to the best of your ability, you need</p> <p>19 to answer them. Do you understand?</p> <p>20 A. Uh-huh.</p> <p>21 Q. The court reporter is taking down what is said</p> <p>22 so in order for her to do that, you need to answer</p> <p>23 audibly, in other words, a "yes" or "no." Nodding your</p> <p>24 head, she can't type. Do you understand that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 5</p> <p>1 Q. Are you familiar -- do you understand that?</p> <p>2 A. Yes, I do.</p> <p>3 Q. In other words, you speak for Metco and what you</p> <p>4 say is essentially Metco talking. Do you understand?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Now in preparation for this deposition, what</p> <p>7 steps did you take to prepare for it?</p> <p>8 A. I went back over the file as near as I could.</p> <p>9 There's lots of paper and I didn't read all of it again.</p> <p>10 Q. Okay. Did you talk to anybody other than your</p> <p>11 counsel?</p> <p>12 A. No. I talked it over with my husband and my son</p> <p>13 who was working for us at the time.</p> <p>14 Q. Okay. Approximately how much time did you spend</p> <p>15 chatting with them?</p> <p>16 A. Not too much time. It's all pretty clear in our</p> <p>17 minds. We didn't get paid.</p> <p>18 Q. Okay. Did you talk to anyone other than your</p> <p>19 husband, your son and your counsel in preparing for this?</p> <p>20 A. No. Doug, a little bit</p> <p>21 MR. MACHETANZ: Okay. Let's mark this as</p> <p>22 Exhibit 1 if we could, please.</p> <p>23 (Exhibit No. 1 marked.)</p> <p>24 Q. Handing you Exhibit 1. Have you ever seen that</p> <p>25 document before?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. Yes, I have.</p> <p>2 Q. And taking a look at the items designated in</p> <p>3 Paragraphs 1 through A, Items 1 through 6, are you</p> <p>4 prepared to talk about those items?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Before we go through those items, I would</p> <p>7 like to talk to you a little bit about yourself and about</p> <p>8 Metco. Could you just give me a brief thumbnail</p> <p>9 experience of your education and work history?</p> <p>10 A. I graduated high school. I took a</p> <p>11 correspondence course in accounting. And I went to work</p> <p>12 for my husband and we started Metco in 1973 and I kept</p> <p>13 books for him.</p> <p>14 Q. Okay. And what does Metco do?</p> <p>15 A. We started out with my husband doing diesel</p> <p>16 service because that's what he was, was a diesel</p> <p>17 mechanic, but Seward didn't have any concrete, didn't</p> <p>18 have a concrete ready-mix plant so we put that in and did</p> <p>19 excavation then. And we do it for the whole town is what</p> <p>20 we do.</p> <p>21 Q. Do you also provide trucking services for</p> <p>22 customers?</p> <p>23 A. Yes, we do.</p> <p>24 Q. And repair services?</p> <p>25 A. Sometimes when we're working for a contractor,</p>	<p style="text-align: right;">Page 8</p> <p>1 the 15th. We kind of work that over orally with the</p> <p>2 person we're doing the work for.</p> <p>3 Q. Okay. And what do you do if you don't get a</p> <p>4 payment?</p> <p>5 A. Well, usually we do. But there are -- usually</p> <p>6 we look for -- sometimes we contact the person,</p> <p>7 personally we contact them and ask what the problem is</p> <p>8 and why it isn't available. If it is a bonded job, which</p> <p>9 this one was, we look towards the general contractor.</p> <p>10 Q. Why is that?</p> <p>11 A. Because we're in a small town, but everybody</p> <p>12 knows that if it's a federally-contracted bonded job,</p> <p>13 they're responsible for payment. If it's an arrears --</p> <p>14 and that's why I contacted Randy Randolph right away.</p> <p>15 Q. Okay.</p> <p>16 A. See, June -- we started working for them the 3rd</p> <p>17 of May and when June came around, it wasn't paid and</p> <p>18 so...</p> <p>19 Q. Let me ask you this, then. From what I</p> <p>20 understand, it was your -- it was your understanding at</p> <p>21 the time you were performing the contract relating to the</p> <p>22 Homer project, that Nugget was the general contractor on</p> <p>23 this project --</p> <p>24 A. Yes, it was a Nugget barge.</p> <p>25 Q. -- and had a bond that would provide payment in</p>
<p style="text-align: right;">Page 7</p> <p>1 we will. Seward is a small town that doesn't have</p> <p>2 everything available, so sometimes we will help with</p> <p>3 lubing and fixing oil leaks and things that keeps a piece</p> <p>4 of equipment running. Nothing really big.</p> <p>5 Q. Okay. And are you the person who prepares the</p> <p>6 billings and keeps the records for Metco?</p> <p>7 A. At the time that this happened, I was.</p> <p>8 Q. Okay. And are most of your contracts done via</p> <p>9 oral agreement?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And how often do you send out the</p> <p>12 billings?</p> <p>13 A. Monthly.</p> <p>14 Q. And after the billing, when are payment --</p> <p>15 payment due on a billing?</p> <p>16 A. They're due between the 10th and the 15th of the</p> <p>17 following month.</p> <p>18 Q. Okay. So you try to send out your billings</p> <p>19 between the 10th and the 15th and then --</p> <p>20 A. We try to send them out right after the 1st so</p> <p>21 they have time to get it paid by then.</p> <p>22 Q. Okay. So if you had a billing that you send out</p> <p>23 on, for example, June 1st, the billing would become due</p> <p>24 on July 15th?</p> <p>25 A. At least by July 15th, yes, between the 10th and</p>	<p style="text-align: right;">Page 9</p> <p>1 the event Spencer Rock didn't provide payment?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I presume at the time you had that</p> <p>4 understanding, you made no distinction between what your</p> <p>5 rights were if Spencer was considered a subcontractor or</p> <p>6 if Spencer was considered a supplier?</p> <p>7 A. It was a Nugget barge. He was working for</p> <p>8 Nugget and we assumed that that was the way it would go.</p> <p>9 Q. Okay. When you talk about understanding that</p> <p>10 the general contractor on a federal project has a bond,</p> <p>11 did you at the time you entered -- started performing</p> <p>12 your work on this project, did you make any distinction</p> <p>13 in your head as to whether Spencer was a subcontractor or</p> <p>14 a supplier or did that simply not matter to you?</p> <p>15 A. Truthfully, I didn't think about it.</p> <p>16 Q. Okay. Let's talk about the initial contract you</p> <p>17 had on this project. How did you become involved in the</p> <p>18 project? What happened?</p> <p>19 A. Bob LaPore approached my husband and wanted a</p> <p>20 price for taking the rock from Alaska Railroad that was</p> <p>21 coming down on the railroad and moving it from the siding</p> <p>22 to the box at the barge. And he didn't give us enough</p> <p>23 information to give him a good straight-forward bid, so</p> <p>24 he thought he would just do it himself, but as soon as he</p> <p>25 got down there he discovered he didn't have the equipment</p>

<p style="text-align: right;">Page 10</p> <p>1 to do it. And so he come and asked us if we would help</p> <p>2 him get it to the box to be loaded on the Nugget barge.</p> <p>3 And we had handled some Spencer Rock before for some</p> <p>4 project, so we knew a little bit about Bob and we knew</p> <p>5 that Nugget was involved and we said, "Yeah, we would do</p> <p>6 that."</p> <p>7 Q. Do you recall about when that was?</p> <p>8 A. Well, it had to have been in May because we</p> <p>9 started working for him the 3rd of May.</p> <p>10 Q. Okay. So it was almost immediately after Bob</p> <p>11 LaPore spoke with Metco that Metco commenced work?</p> <p>12 A. Yeah, he asked us to.</p> <p>13 Q. At that time, did you believe your contract was</p> <p>14 with Spencer Rock?</p> <p>15 A. We believed our contract was with Spencer Rock,</p> <p>16 but we expected him to get paid by Nugget and Nugget</p> <p>17 would be responsible. We do work for general contractors</p> <p>18 all the time and the general is the one that covers it.</p> <p>19 It's his umbrella that covers it.</p> <p>20 Q. Okay. Now when you entered into the contract</p> <p>21 with Spencer Rock, what terms did you discuss with Bob</p> <p>22 LaPore?</p> <p>23 A. I really don't know because my husband talked</p> <p>24 with him. I assumed and my husband told me no different</p> <p>25 that it would be pay as we always do.</p>	<p style="text-align: right;">Page 12</p> <p>1 of overwhelmed.</p> <p>2 Q. Do you know when he said that?</p> <p>3 A. No, I don't.</p> <p>4 Q. Do you know when that -- you said you don't know</p> <p>5 when that occurred?</p> <p>6 A. Huh-uh.</p> <p>7 Q. Do you know anything else about this discussion</p> <p>8 between Randy and your husband?</p> <p>9 A. That's all I know.</p> <p>10 Q. Do you know if there are any notes to that</p> <p>11 discussion?</p> <p>12 A. No. I'm sure they were just out probably by the</p> <p>13 barge or by the siding.</p> <p>14 Q. Probably during the work?</p> <p>15 A. Probably.</p> <p>16 Q. When you entered into this agreement -- and when</p> <p>17 I'm referring to you, I'm referring to Metco since you're</p> <p>18 the 30(b)(6) designee.</p> <p>19 A. Uh-huh.</p> <p>20 Q. At the point your husband and Bob finished these</p> <p>21 discussions, did your husband or did Metco believe it had</p> <p>22 had a contract with Spencer?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And did it provide services in response</p> <p>25 to that agreement or pursuant to that agreement?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And does that mean billing at or around the 1st</p> <p>2 with payment by the 10th or 15th?</p> <p>3 A. Yes.</p> <p>4 (Mr. Sewright entered proceedings.)</p> <p>5 Q. Now when you entered into this contract, did you</p> <p>6 discuss any equipment rates or charges like that?</p> <p>7 A. We have a definite scale that we go by and we</p> <p>8 didn't do any different with Bob, so I'm sure that they</p> <p>9 discussed -- we furnished loaders and trucks and Bob</p> <p>10 furnished an excavator that he rented from somewhere,</p> <p>11 maybe two, I'm not sure, but we put operators on them.</p> <p>12 Q. Did Bob and Metco discuss the specific number of</p> <p>13 trucks and loaders that he would want?</p> <p>14 A. I'm sure they talked about it. We probably</p> <p>15 had -- I think we furnished two trucks at the most and</p> <p>16 one of them we beefed up a little bit so it would be</p> <p>17 better for riffraff because they were big rock.</p> <p>18 Q. Did Nugget participate at all in these initial</p> <p>19 discussions?</p> <p>20 A. Nugget wasn't there at the initial discussion,</p> <p>21 but my husband did talk to Randy at one time.</p> <p>22 Q. When?</p> <p>23 A. I can't say the date. I just don't know the</p> <p>24 date, but Randy expressed that he wanted us to give Bob</p> <p>25 the support that we could because he thought Bob was kind</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes. We were aware that -- that Nugget needed</p> <p>2 this rock and that Bob LaPore was furnishing it.</p> <p>3 Q. I understand that. And at the time you</p> <p>4 commenced work, you had no discussions with Nugget about</p> <p>5 this project; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. When Metco first provided services to the</p> <p>8 project, was material already at the siding area for</p> <p>9 transport to the barge area?</p> <p>10 A. Yes. That was -- our job was to move it from</p> <p>11 the siding to the box that would be loaded onto the</p> <p>12 barge.</p> <p>13 Q. Okay. Did you also provide fuel, oil, and</p> <p>14 maintenance to Bob LaPore's equipment?</p> <p>15 A. No fuel. And a few days after we got into the</p> <p>16 job, Bob LaPore had talked to one of our mechanics down</p> <p>17 there working on ours and told him he would like him to</p> <p>18 lube his equipment and watch for oil leaks and keep them</p> <p>19 running. And that was relayed to me in a little note</p> <p>20 from the mechanic and we agreed to do that.</p> <p>21 Q. Okay. Now that was a conversation between Bob</p> <p>22 LaPore and your husband?</p> <p>23 A. I think that was a -- I think that was a</p> <p>24 conversation between Bob LaPore and the mechanic on duty.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 14</p> <p>1 A. But we wanted to offer Bob as much support as 2 possible. We knew he had a deadline to meet. 3 Q. The box you're referring to, are you talking 4 about loading the material in a skip box? 5 A. I don't know. I just know it was to a box and 6 it was something that they kind of built themselves or 7 manufactured or put some things on it to make it work for 8 what they wanted it for. 9 Q. Who -- did Bob notify you when the rock was 10 ready for transport to the box? 11 A. Actually, we're right across from the railroad 12 siding and we were always aware when the rock came down. 13 And I think it was word of mouth passed down to us, too. 14 Q. So you could see the railroad unload the rock 15 and you knew it would be time for you to go to work? 16 A. Right. It wasn't always a convenient time, 17 either. It just came. 18 Q. And you would go out, then, and load the rock, 19 transport it to the box and drop it off? 20 A. Uh-huh. And Bob did, too. He had a hard time 21 keeping -- he didn't know the people like we did and he 22 had a hard time keeping drivers for his trucks and loader 23 operators. 24 Q. How do you know that? Did Bob complain to you 25 about that?</p>	<p style="text-align: right;">Page 16</p> <p>1 attached documents is? 2 A. Yes. That's a time card for -- I think it's 3 5/3. It's stapled and I can't read it, but I think it's 4 5/3/97. 5 Q. So from this, on this it says, "Customer," for 6 example, and it says, "Spencer Rock." 7 A. Yes. It's a daily time card and we require 8 daily time cards of our employees. 9 MR. SHAMBUREK: Can we agree it says 5/4 of '97? 10 This is stapled lower down on the sheet. 11 MR. MACHETANZ: Sure. It does say 5/4 of '97. 12 A. Yeah, I see. Okay. 5/4. And this was a 13 mechanic who worked for us. 14 Q. (By Mr. Machetanz) And the customer reflects who 15 your contract is with? 16 A. Yes. 17 Q. And then that helps you decide who to charge? 18 A. Exactly. Now you see there's a second line that 19 says, "fuel," a quarter of an hour, but that doesn't have 20 Spencer there. The first line deals with Spencer and he 21 fixed tires and adjust -- did adjusting on the equipment 22 that was Spencer's. 23 Q. Okay. And then am I correct what you do is you 24 take these and aggregate them for a billing at the end of 25 the month? In other words, all the things that say</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yeah. And we would have to send a loader 2 operator down to take over if he didn't have someone. 3 Q. So Bob would sometimes call and say, "I'm having 4 problems. I don't have an operator. Can you" -- 5 A. And it wasn't always Bob. It was sometimes one 6 of his men. 7 Q. Okay. 8 A. So they evidently had been told to call on us if 9 they needed something. 10 Let's talk about how you would keep track of the 11 time you spent performing your services. Looking at your 12 discovery request. 13 MR. MACHETANZ: Actually let's mark these 14 discovery responses, let's mark these as Exhibit 2, if we 15 could. 16 (Exhibit No. 2 marked.) 17 Q. (By Mr. Machetanz) Handing you what's noted as 18 Exhibit 2. I don't want to bore you with the legalese of 19 this, so let's go back to Page 7 of 50, if we could, 20 please -- 21 A. This? 22 Q. -- of the attached documents. I'm sorry, I 23 wasn't clear on that. 24 A. That's okay. 25 Q. Can you identify what Page 7 of 50 of the</p>	<p style="text-align: right;">Page 17</p> <p>1 "Spencer" on them you select -- 2 A. Yes, I try to keep up with it daily. Okay. 3 Q. And so if we look at one of these time cards, 4 let's go back, say, to Page 12 of 50. 5 A. Uh-huh. 6 Q. Where you see the Don Sutherland time card, 7 10418. There's two separate customers; one is Zubeck and 8 one is Spencer. Do you see that? 9 A. Correct. 10 Q. And from that, you can tell that Zubeck is to be 11 charged for four and a half hours and Spencer is to be 12 charged for eight hours; is that correct? 13 A. Right. That's correct. 14 Q. And I take it the time cards indicate -- are 15 filled out the day the work is performed? 16 A. Yes. 17 Q. And the job description describes what's being 18 done? 19 A. Yes. 20 Q. So in other words, on 5/13 -- let me go back to 21 the one I was talking about. For example, on 5/14/97, 22 Don Sutherland hauled rock for Spencer to the -- is that 23 to the railroad dock? 24 A. Yes. He hauled from the siding down to that 25 box.</p>

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<p>1 Q. Okay,</p> <p>2 A. And it was with our GMC truck.</p> <p>3 Q. Okay. And to perform that work, the purpose --</p> <p>4 your purpose was specifically to haul rock, put it in the</p> <p>5 box for the barge to be loaded?</p> <p>6 A. Yeah, that was my understanding.</p> <p>7 Q. Okay. Now if we continue on, after you get to</p> <p>8 Page 50 of 50, you start with statements -- you start</p> <p>9 with statements. Do you see where we have 1 of 6 and 2</p> <p>10 of 6, Ms. Dieckgraeff?</p> <p>11 A. Yes.</p> <p>12 Q. Do Pages 1 and 2, which are listed as 1 and 2,</p> <p>13 do those reflect the charges which you had made for this</p> <p>14 project?</p> <p>15 A. This shows where -- this was overtime that I</p> <p>16 credited Bob because he complained about the overtime.</p> <p>17 He hadn't paid the bill and I -- and we talked to him in</p> <p>18 our office, right in the office. And I said, "Bob, you</p> <p>19 haven't paid." And he said, "No, I haven't been paid by</p> <p>20 Nugget," but he said, "the overtime is eating me up."</p> <p>21 And I said, "Well, you have to pay overtime." And he</p> <p>22 said, "I don't pay overtime." Well, we had heard that he</p> <p>23 wasn't paying his drivers overtime and I showed him the</p> <p>24 law that you need to pay it, but I said, "If it will help</p> <p>25 you pay, we will credit you the overtime," and that's</p>	<p>1 A. Yes, it shows them all.</p> <p>2 Q. Okay. And where I see, for example, date 5/3/97</p> <p>3 --</p> <p>4 A. Right. That was --</p> <p>5 Q. -- does that reflect the day the services were</p> <p>6 performed?</p> <p>7 A. Yes.</p> <p>8 Q. And it describes what was being provided, a</p> <p>9 loader and dump truck?</p> <p>10 A. Yes.</p> <p>11 Q. And then the reference of 019075, what is that?</p> <p>12 A. 019075, that's the invoice number.</p> <p>13 Q. Okay. Would you invoice on a daily basis?</p> <p>14 A. I tried to, yes.</p> <p>15 Q. Okay. So at the end of the day, on 5/3, you</p> <p>16 would ideally provide --</p> <p>17 A. Yeah, it may have been done the next day because</p> <p>18 the men turned their time in at the end of the day, so it</p> <p>19 was probably the next day or a couple of days later, but</p> <p>20 I didn't credit the overtime until June 30th.</p> <p>21 Q. I understand. When we're talking about these</p> <p>22 invoices, the first one you provided Mr. LaPore was on</p> <p>23 5/3/97 -- perhaps 5/4/97.</p> <p>24 A. Uh-huh.</p> <p>25 Q. Throughout the time that you were providing</p>
Page 19	Page 21
<p>1 what I did.</p> <p>2 Q. Okay. Now let me -- let me ask you a question.</p> <p>3 If we look at Pages 1 and 2 of this document, does that</p> <p>4 show the various charges and credits for this project?</p> <p>5 A. Yes. And you can see on this was -- this was</p> <p>6 after I had already billed it, but I went back and</p> <p>7 credited it to each separate invoice so he would know</p> <p>8 what was the overtime for that invoice.</p> <p>9 Q. So this is an invoice to Spencer Rock Products?</p> <p>10 A. This is a statement to Spencer Rock.</p> <p>11 Q. Is there a different sort of invoice that you</p> <p>12 utilize?</p> <p>13 A. Yeah. These are invoices next -- those are</p> <p>14 statements, the 1 and 2 of 6 and then the next page is an</p> <p>15 invoice.</p> <p>16 Q. Okay. Let's -- pardon me. Should the statement</p> <p>17 accurately reflect the various invoices to Spencer Rock</p> <p>18 Products?</p> <p>19 A. Now would you repeat that?</p> <p>20 Q. Okay. You've described Pages 1 and 2 as a</p> <p>21 statement?</p> <p>22 A. Yes.</p> <p>23 Q. And my question is, should this statement fairly</p> <p>24 reflect the various charges and credits to Spencer Rock</p> <p>25 Products?</p>	<p>1 Mr. LaPore a copy of these invoices, did you at any point</p> <p>2 prior to late June provide Nugget with a copy of the</p> <p>3 invoices?</p> <p>4 A. I talked to Nugget -- to Randy of Nugget, I</p> <p>5 believe it was on the 26th of June, and I faxed him</p> <p>6 copies of everything that we had billed up to then. We</p> <p>7 hadn't billed everything at a time. We were billing it,</p> <p>8 but I just showed him up to then what was overdue.</p> <p>9 Q. Before that point, had you spoken at all with</p> <p>10 Nugget or before that point had you provided Nugget with</p> <p>11 any of the invoices?</p> <p>12 A. No.</p> <p>13 Q. Before that point, had you spoken with anybody</p> <p>14 at Nugget concerning Spencer Rock's nonpayment?</p> <p>15 A. No, because it really wasn't due until the 15th</p> <p>16 of June and that's when we got concerned, when it became</p> <p>17 due and it wasn't paid.</p> <p>18 Q. Okay. Let's talk about that. I see there's a</p> <p>19 significant number of charges on 5/4 -- 5/3 and 5/4. Do</p> <p>20 you see that? I'm looking at your statement again.</p> <p>21 A. Yeah, 5/3 and 5/4.</p> <p>22 Q. Would that reflect the first barge loading?</p> <p>23 A. It was the first one that we helped with.</p> <p>24 Q. Okay. And then I see there's more equipment</p> <p>25 charges that appears on the 13th, 14th and 15th. Do you</p>

<p style="text-align: right;">Page 22</p> <p>1 see that?</p> <p>2 A. Uh-huh, and on the 9th.</p> <p>3 Q. The 9th is equipment maintenance; is that</p> <p>4 correct?</p> <p>5 A. That's right.</p> <p>6 Q. And would that be providing the maintenance that</p> <p>7 Bob LaPore requested from your mechanic?</p> <p>8 A. Well, I'm not -- I'm sure it was because that</p> <p>9 looks like the first maintenance that we did. We didn't</p> <p>10 do it right from the very beginning when we started. It</p> <p>11 was a few days afterwards.</p> <p>12 Q. Okay. And then we see another charge on the</p> <p>13 13th, 14th and 15th. Do you see that?</p> <p>14 A. That's maintenance, loader, truck, et cetera,</p> <p>15 and I sent -- I don't seem to have the invoices that show</p> <p>16 that. They're not here.</p> <p>17 Q. Okay. The question I have is really a fairly</p> <p>18 simple one. Would that reflect the second barge loading?</p> <p>19 A. I can't tell you that because I don't know when</p> <p>20 the barge was full. I don't know how many loads they had</p> <p>21 to bring down when they considered the barge full.</p> <p>22 Q. Okay. So is it fair to say you don't know how</p> <p>23 much -- how many tons were loaded on the barge?</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. But as I understand, your service to</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Uh-huh.</p> <p>2 Q. Since he's hauling rock, would that then</p> <p>3 indicate to you that, in fact, Metco was hauling rock to</p> <p>4 the barge on 5/14?</p> <p>5 A. Yes, it would. The GMC truck -- it looks like</p> <p>6 Don relieved Rocky because they were using the same</p> <p>7 truck.</p> <p>8 Q. Okay. On Page 14, we see another charge by Don</p> <p>9 Sutherland, Time Card Number 10423, "Spencer, haul rock,</p> <p>10 fourteen and a half hours."</p> <p>11 A. Uh-huh.</p> <p>12 Q. Would it be fair to say based on that, that the</p> <p>13 work that was being performed on the 15th was also</p> <p>14 hauling rock to load a barge?</p> <p>15 A. Right.</p> <p>16 Q. Okay.</p> <p>17 A. It was hauling from the siding from the railroad</p> <p>18 down to the barge.</p> <p>19 Q. Okay. And on the 16th -- I'm looking at Page</p> <p>20 16, there's a reference on the 16th to stock piling</p> <p>21 filter rock, under the Spencer filling. Do you know what</p> <p>22 that reflects?</p> <p>23 A. He was using our 966 loader and he was stock</p> <p>24 piling it. I don't know whether the barge wasn't there</p> <p>25 and they were just stock piling or whether he meant that</p>
<p style="text-align: right;">Page 23</p> <p>1 Spencer was to provide the transport from the siding to</p> <p>2 the skip box?</p> <p>3 A. Yes.</p> <p>4 Q. Given that fact, and given the fact that there</p> <p>5 is a substantial charge for trucks, operators, loaders</p> <p>6 and trucks, on the 13th, 14th and 15th, is it fair to say</p> <p>7 that that probably reflects another barge loading on that</p> <p>8 date?</p> <p>9 It could have been --</p> <p>10 MR. SEWRIGHT: Objection, foundation.</p> <p>11 MR. SHAMBUREK: I also object to the extent it</p> <p>12 calls for speculation, except I think --</p> <p>13 A. Yeah, I just don't know when the barge was</p> <p>14 loaded and when we were waiting for more rock. I don't</p> <p>15 know how much the barge holds.</p> <p>16 Q. Okay. Could you turn to Pages 12, 13 and -- 12?</p> <p>17 Let's start with Page 12 of 50. 12 of 50 that was the</p> <p>18 one we looked at previously. Do you have that before</p> <p>19 you?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you see the time card for Donald Sutherland</p> <p>22 on 5/14/97 indicates "haul rock"?</p> <p>23 A. Yes.</p> <p>24 Q. And I presume that would then be reflected in</p> <p>25 the truck and operator for 5/14/97?</p>	<p style="text-align: right;">Page 25</p> <p>1 it was going in the box. He had to be loading trucks or</p> <p>2 loading the box. I'm not sure which.</p> <p>3 Q. Okay. Now tell me, do you recall at any point</p> <p>4 the stock pile that Metco was loading from and delivering</p> <p>5 to the box as being completely exhausted?</p> <p>6 A. I don't -- I don't know. I don't know.</p> <p>7 Q. Let's turn to the work on the 17th.</p> <p>8 A. The next one?</p> <p>9 Q. Yes. Seems to work out nicely, Page 17</p> <p>10 discusses the 17th. Doug Jewell appears to be stock</p> <p>11 piling from 1:00 to 5:30. Do you know, and similarly</p> <p>12 Jim -- I can't read that --</p> <p>13 A. Pipkin.</p> <p>14 Q. -- Pipkin also appears to be stock piling. Do</p> <p>15 you know what that work reflects?</p> <p>16 A. He was stock piling rock and I don't know</p> <p>17 whether they're piling it waiting for a barge or whether</p> <p>18 it's -- it just says "stock pile," so I assume they're</p> <p>19 stock piling it. I know we had to clean up the siding.</p> <p>20 Q. Okay. Do you recall when you had to do that?</p> <p>21 A. As far as I knew, that was just part of the job</p> <p>22 is to keep the siding clear.</p> <p>23 Q. Okay. Do you know if the entries on the 16th or</p> <p>24 17th would reflect that cleanup, since it refers to stock</p> <p>25 piling rather than trucking?</p>

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1 A. Well, it looks like one person relieved the
2 other person, it looks like, but they -- so the loader
3 was continuously running for ten and three-quarters
4 hours, it looks like.
5 Q. Would that suggest to you that that's part of
6 the pad cleanup then?
7 A. No. That was the rock itself that we were
8 moving.
9 Q. Okay.
10 A. The cleanup for -- it makes kind of a mess and
11 the cleanup itself came afterwards, I'm sure.
12 Q. Okay. Now I believe you first became -- when
13 did you first become concerned about Bob LaPore and
14 Spencer Rock Products not paying you?
15 A. Well, probably the 15th of June.
16 Q. Okay. What did you do then?
17 A. We talked to him in the office about if he had
18 been paid.
19 Q. And what did Bob LaPore tell you?
20 A. He had not been paid. That he would get us
21 money just as soon as he could and complained about
22 overtime.
23 Q. So when you met with Mr. LaPore, he represented
24 to you that he had not been paid for the first two -- at
25 all for any of the work that he had done?

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1 A. Yeah. He said he had not been paid. And Randy,
2 when I called him the 26th of June, he told me that Bob
3 LaPore had not been paid.
4 Q. Well, let's continue with your discussion with
5 Bob LaPore on or about 6/15. He said he had not been
6 paid. What else did he tell you?
7 A. He complained about the overtime.
8 Q. Okay. Anything else?
9 MR. SHAMBUREK: The only objection, did you
10 establish that they talked on the 15th?
11 MR. MACHETANZ: I said, "On or about the 15th."
12 A. On or about, I don't know what the date was.
13 Q. He complained about the overtime. He said he
14 hasn't been paid. Do you recall anything else?
15 A. No. I showed him a copy of the law where he
16 should pay overtime.
17 Q. Did he tell you that he would pay in the future
18 or what did he --
19 A. He didn't.
20 Q. Okay. What -- after that meeting with Bob
21 LaPore, what did you do next? As of the 15th -- at or
22 around the 15th, you had spoken with him and he said he
23 hasn't been paid and as I understand it, he didn't give
24 you any promises he would get paid in the future; is
25 that --

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1 A. Well, he said he would pay us as soon as he
2 could. And we continued to bill him because it was --
3 the rock was still coming down.
4 Q. And at that point, he was behind in payments and
5 it indicated -- and had made no payments; correct?
6 A. Uh-huh.
7 Q. And he indicated he, himself, had not been paid?
8 A. Yes.
9 Q. Now you continued to provide services at that
10 point?
11 A. And it was between the 15th and the 26th that I
12 got in touch with Doug to find out if they had been paid
13 and got in touch with Jack Goodwill from Northern
14 Stevedore.
15 Q. Why -- if you haven't been paid, why did you
16 continue to provide services?
17 A. Because it was a bonded job and we were sure he
18 would get paid.
19 Q. So one of your -- your understanding was that if
20 Mr. LaPore didn't pay you because it was a bonded job,
21 you could get the payment from Nugget?
22 A. Right. And Nugget was aware that we were
23 involved.
24 Q. Okay. So after the -- on or around the 15th,
25 then you spoke with Mr. Lechner?

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1 A. Uh-huh.
2 Q. Do you recall when you spoke with Mr. Lechner?
3 A. No, but I think you got here a copy of a note he
4 sent my son.
5 Q. Okay. Let's see if we can -- that may be --
6 A. Yeah, it's Page 42 of 50. And I thought I
7 should --
8 Q. That was on the 28th of July?
9 A. Uh-huh.
10 Q. Okay. Do you know if you had a conversation
11 with Mr. Lechner before this?
12 A. I don't remember talking with Doug before, but
13 it was -- I continued to be concerned because we didn't
14 get paid and I...
15 Q. Now I believe you said you spoke to Randy on
16 either the 26th or 27th?
17 A. The 27th.
18 Q. The 27th?
19 A. Uh-huh.
20 Q. And that's because after you had the
21 conversation, you faxed him the invoices; is that
22 correct?
23 A. Right.
24 Q. Now before -- between the time you spoke with
25 Mr. LaPore and the ten days after or approximately --

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 A. Or around ten days.</p> <p>2 Q. -- sure, sure -- on or around ten days when you</p> <p>3 spoke with Randy, do you recall talking with any other</p> <p>4 suppliers?</p> <p>5 A. No.</p> <p>6 Q. What did you do between the ten days from when</p> <p>7 you first spoke with Mr. LaPore and speaking -- and I'm</p> <p>8 using ten days as an approximate, I'm sorry, it's just I</p> <p>9 guess I got it stuck in my mind so I'm using it -- what</p> <p>10 steps did you take to ensure you would be paid between</p> <p>11 those two dates?</p> <p>12 A. We talked to Bob, you know, and realized he</p> <p>13 hasn't been paid and we continued to do the work until</p> <p>14 the 26th. I think the 26th I think is the last day that</p> <p>15 we worked for him. And I think it was then that we</p> <p>16 became aware that Nugget kind of took over there and</p> <p>17 started loading the barge themselves.</p> <p>18 Q. Okay. Last provided services on 6/26 or --</p> <p>19 6/26, you believe?</p> <p>20 A. Yeah, uh-huh. And I don't know whether we did</p> <p>21 it the very next day or whether there was any rock in or</p> <p>22 how that happened, but the 26th was the last work that we</p> <p>23 did.</p> <p>24 Q. And then you spoke with Randy on the 27th?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. But you were comfortable you would ultimately</p> <p>2 get paid because this was a bonded project?</p> <p>3 A. Yes, we were. It was Nugget's barge and they</p> <p>4 were a federally-bonded job.</p> <p>5 Q. And during this period of time until you last</p> <p>6 provided services on the 26th, you believed you had a</p> <p>7 contract with Spencer?</p> <p>8 A. Yes.</p> <p>9 Q. And you had no contract negotiations with</p> <p>10 Nugget?</p> <p>11 A. No, we didn't contract with Nugget. We</p> <p>12 contracted with Spencer, but it was Nugget's barge and it</p> <p>13 was ultimately going to be their rock.</p> <p>14 Q. Okay. Would it change your opinion about</p> <p>15 Nugget's obligation for this if, in fact -- would it</p> <p>16 change your opinion about Nugget's obligations to you if,</p> <p>17 in fact, Nugget had paid Mr. LaPore for the first two</p> <p>18 barge loads of rock?</p> <p>19 A. That's why I asked Randy and he said, "No, had</p> <p>20 not been paid."</p> <p>21 Q. Would it change your opinion if, in fact,</p> <p>22 Randy -- about Nugget's responsibility if, in fact, Randy</p> <p>23 was wrong and Nugget had paid for the first two barge</p> <p>24 loads of rock?</p> <p>25 A. I don't understand that.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And tell me what did Randy tell you.</p> <p>2 A. He told me that Bob LaPore had not been paid and</p> <p>3 I -- and I faxed him the invoices. He gave him his fax</p> <p>4 number.</p> <p>5 Q. Anything else he told you?</p> <p>6 A. I don't recall anything. It was a long time</p> <p>7 ago.</p> <p>8 Q. Certainly. Now at any point in this time,</p> <p>9 did -- in this conversation, did Randy say, "Don't worry,</p> <p>10 Nugget will pay you"?</p> <p>11 A. No, he did not say that.</p> <p>12 Q. At any point until the 26th, did anybody from</p> <p>13 Nugget tell you that Nugget would pay you?</p> <p>14 A. Nope.</p> <p>15 Q. At any point --</p> <p>16 A. He did say to continue to give him support,</p> <p>17 which we did.</p> <p>18 Q. When did he tell you that?</p> <p>19 A. That's when he talked to my husband and I don't</p> <p>20 know the date of that. But Randy was around because he</p> <p>21 gave us a card.</p> <p>22 Q. Okay. During the time of performance, did</p> <p>23 anyone from Spencer -- from Spencer tell you that Nugget</p> <p>24 would pay your bills?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Okay. As I understand, one of your underlying</p> <p>2 premises throughout this is Bob LaPore didn't get paid</p> <p>3 and he told you he didn't get paid and as a consequence</p> <p>4 of that, Nugget owes you the full amount for the services</p> <p>5 you provided. Now if I could show you documentation that</p> <p>6 would indicate that, in fact, Nugget had paid Bob LaPore</p> <p>7 for the first two barge loads of rock, would that change</p> <p>8 your view -- and that LaPore did not tell you the truth</p> <p>9 and LaPore took that money and didn't pay you -- would</p> <p>10 that change your view about Nugget's, I guess legal term</p> <p>11 would be culpability, but I guess responsibility for</p> <p>12 paying your bills?</p> <p>13 MR. SHAMBUREK: If I could -- if you understand</p> <p>14 I have to object to the extent it calls for a legal</p> <p>15 conclusion.</p> <p>16 MR. MACHETANZ: Certainly.</p> <p>17 A. I asked Randy if Bob had been paid and he said,</p> <p>18 no, he hadn't been. So then I understood that Bob had</p> <p>19 not been paid and was having trouble paying us and I</p> <p>20 assumed that Nugget would eventually pay him, that he</p> <p>21 could pay us, but if they didn't, I felt that we had a</p> <p>22 way of being covered by their bond.</p> <p>23 Q. Okay.</p> <p>24 A. So if there was a wrangle between Spencer and</p> <p>25 Nugget, then that was between them. When we worked as a</p>

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1 general contractor before and often we had to sign a
 2 paper that we paid everything before we got paid --
 3 Q. Okay.
 4 A. -- the final pay. And that's why, then, I
 5 wanted to go further and make sure that all the people in
 6 the other areas knew that we had not been paid.
 7 Q. Okay. Now let me -- okay. Now -- and it
 8 remains your current position that Nugget is responsible
 9 for paying Metco under the terms of the bond; is that
 10 correct?
 11 A. Yes, I always felt that.
 12 Q. Because you provided material to Spencer who
 13 provided it -- or services to Spencer who provided it to
 14 Nugget who was the general contractor?
 15 A. Uh-huh, and it went on a Nugget barge.
 16 Q. Okay. Now are there any other reasons you
 17 believe that Nugget has an obligation to pay you other
 18 than that bonding relationship?
 19 MR. SHAMBUREK: I only object to the extent it
 20 mischaracterize her testimony because she also referred
 21 to conversations with Randy and the delivery to the
 22 Nugget barge, but with that, you can answer.
 23 A. I guess I would just have to restate that I
 24 believe that -- that -- that when you were bonded, all
 25 the little people were supposed to get paid.

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1 Q. Okay.
 2 A. And we were one of the little people. And it's
 3 from -- even though we had an oral contract, that's
 4 really how we operate there and we've never had such a
 5 problem before.
 6 Q. Okay.
 7 A. And when we acted as a general, we had to inform
 8 the head guys that everybody was paid.
 9 Q. Do you believe that Nugget ever defrauded you?
 10 A. You mean on this whole thing?
 11 Q. Yes.
 12 A. I kind of feel they didn't hold up to their
 13 responsibility.
 14 Q. Because they didn't pay -- because the bond
 15 hasn't paid You and Nugget hasn't paid you?
 16 A. Yes.
 17 Q. Is there any -- other than them not holding up
 18 to their responsibility, is there any other reason or
 19 basis that you have for believing that Nugget's defrauded
 20 you or misrepresented facts to you?
 21 MR. SEWRIGHT: Objection to the form.
 22 Q. You may answer.
 23 A. The rock comes from inland and it was going to
 24 Homer and how was it going to get there? It had to be --
 25 Seward was the ideal spot to bring it and load it onto

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1 the barge. They needed the rock for the project. And I
 2 feel that they had a responsibility to make sure that all
 3 these little steps were taken and were covered. That's
 4 just how it goes. I mean, you weren't going to truck it
 5 all the way to Homer, so that's -- it was all part of the
 6 same job, it was loaded on the Nugget barge. Nugget got
 7 the rock and they used the rock in the project.
 8 Q. If Nugget, in fact, paid LaPore for the rock, do
 9 you believe they should have to pay twice for that rock?
 10 A. Well, they should have -- if Nugget did pay
 11 LaPore, which Randy told me they did not, but if they had
 12 paid LaPore, then they should have insisted on getting
 13 something written from LaPore saying he paid his bills.
 14 He didn't.
 15 Q. You don't believe he did that?
 16 A. I don't think he got the money.
 17 Q. Okay. If he got the money, would that change
 18 your view towards Nugget?
 19 A. Not really, because it was Nugget's
 20 responsibility to make sure that the bills were paid.
 21 They were the big guy and they had to make sure that all
 22 this stuff was handled in a kosher way.
 23 Q. Do you have any other reasons why you believe
 24 that Nugget acted improperly in this entire process?
 25 A. That says it all, the fact that they did not

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1 follow through with anything and they were aware of it.
 2 Q. Okay. Now let me ask you just another couple of
 3 questions. Seward is a small community and you probably
 4 enter into agreements with a variety of the contractors
 5 going down there; is that correct?
 6 A. Yes.
 7 Q. In your experience, is it typical for you to
 8 share those agreements with other third parties?
 9 A. Not necessarily, but it's never any big secret.
 10 Q. Could you understand why one of your clients
 11 wouldn't want you to divulge the terms of your agreement
 12 with him to another party?
 13 A. It's really very aboveboard usually. This
 14 contractor is working for this job and they ask us to
 15 help them do that job. And everybody knows that that
 16 person is working for that job. There's never any -- we
 17 probably don't know all the ins and outs of the contract.
 18 We don't have a copy of it.
 19 Q. And does that seem appropriate to you?
 20 A. As long as it's not trying to defraud somebody,
 21 I think it's probably correct.
 22 Q. Are you familiar -- you've said your -- your
 23 family has worked as general contractors before; is that
 24 correct?
 25 A. Yes, we have.

<p style="text-align: right;">Page 38</p> <p>1 Q. Are you familiar with the concept of back 2 charging? 3 A. Not really. 4 Q. Okay. Have you ever been involved in a lawsuit 5 before? 6 A. One lawsuit. We had to go to court for someone 7 who didn't pay us. 8 Q. In the lawsuit, if one party believes there's 9 money owed and the other party doesn't believe there's 10 money owed, either for a legal reason or a factual 11 reason, do you believe it's appropriate for the defendant 12 to defend on those grounds? 13 MR. SEWRIGHT: Objection to the form of the 14 question. 15 Q. In other words, if you say there's money owed 16 and I disagree with you, is it wrong for me to continue 17 to not pay you because I believe I don't owe you the 18 money? 19 A. Well, you see how we bill. We bill when they do 20 the work and it's very cut and dried and we never 21 overcharge, we never bill for something we didn't do. 22 And so when I bill it, I expect to be paid for it. 23 Q. I'm not talking about this specific instance. 24 A. No, I understand that. 25 Q. What I'm saying is more of just a general</p>	<p style="text-align: right;">Page 40</p> <p>1 EXAMINATION 2 BY MR. VIERGUTZ: 3 Q. And if would you turn to Page 18. And I'm 4 sorry, I'm getting deaf in my old age. What is your 5 name? I'm sorry. 6 A. Barbara. 7 Q. Barbara. And your last name? 8 A. Is Dieckgraeff. 9 Q. How do you spell your last name? 10 A. D-I-E-C-K-G-R-A-E-F-F. 11 Q. Is it German? 12 A. Yes. 13 Q. Are you from there? 14 A. One of my husband's ancestors was in 1980 -- in 15 1854. 16 Q. Wow. 17 MR. SEWRIGHT: Why don't you tell her your last 18 name? 19 Q. From the east side. 20 Did you ever talk to anyone from USF&G, the bonding 21 company for Nugget? 22 A. No. 23 Q. Do you know if anyone from Metco did? 24 A. I don't believe so. 25 Q. And when you spoke of that other lawsuit you</p>
<p style="text-align: right;">Page 39</p> <p>1 proposition. If you were sued and you believed you had 2 legitimate defenses, do you believe you had a right to 3 raise those defenses in the lawsuit? 4 MR. SEWRIGHT: Object to the form of the 5 question. 6 A. I suppose you could put your cards on the table, 7 too. 8 Q. And would you agree with me that by asserting 9 those defenses, I'm not acting in bad faith? 10 MR. SEWRIGHT: Pending objection. 11 A. No, but there is a certain responsibility that 12 someone has when they take on a job and that -- the 13 previous lawsuit was a fellow who didn't finish the job 14 and didn't want to pay us for what we had done. And we 15 had a meeting with the judge and the judge said he has to 16 pay and he paid. 17 MR. MACHETANZ: Okay. Can we take about a 18 five-minute break? 19 THE WITNESS: Sure. 20 (Recess taken.) 21 MR. MACHETANZ: I have no further questions, 22 Mrs. Dieckgraeff. Thank you for coming down here and 23 other counsel may have some questions. 24 MR. VIERGUTZ: Could you mark that Exhibit 3? 25 (Exhibit No. 3 marked.)</p>	<p style="text-align: right;">Page 41</p> <p>1 were involved in, who was the contractor? 2 A. You know, I can't think of his name right now, 3 he was doing work for GTE, General Telephone, and he 4 was -- and we had never worked for him before, but he did 5 pay us. 6 Q. But that was what the suit was about, you sued 7 him because he didn't pay you? 8 A. Yes, that's what it was about. 9 Q. Was -- has there ever been any history since you 10 were in business in 1973, I believe, of you obtaining 11 payment from a bonding company? 12 A. I don't believe we had. I don't think we've 13 ever had that problem. 14 Q. Okay. Is that the only suit you were involved 15 in? 16 A. Uh-huh. Well, we had an accident one time and 17 we had an attorney that represented us, but we never did 18 go to court. 19 Q. The suit that you were involved with, with this 20 contractor, you sued the contractor but not a bonding 21 company; is that correct? 22 A. Yes. I think we had a bonding representative 23 there. 24 Q. But your suit was against the contractor? 25 A. Yes.</p>

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1 CERTIFICATE

2

3 BARBARA DIECKGRAEFF November 29, 2005

4

5 I hereby certify that I have read the foregoing
deposition and accept it as true and correct, with the
6 following exceptions:

7 =====

8 PAGE	LINE	CORRECTION
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
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23

24 Date Barbara Dieckgraeff

25

(Use additional paper to note corrections as needed,
signing and dating each page.) (CC)

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1 REPORTER'S CERTIFICATE.
2
3 I, CAREN S. CARLSON, Registered Professional
4 Reporter and Notary Public in and for the State of
5 Alaska, do hereby certify:
6 That the witness in the foregoing proceedings
7 was duly sworn; that the proceedings were then taken
8 before me at the time and place herein set forth; that
9 the testimony and proceedings were reported
10 stenographically by me and later transcribed under my
11 direction by computer transcription; that the foregoing
12 is a true record of the testimony and proceedings taken
13 at that time; that the witness requested signature; and
14 that I am not a party to nor have I any interest in the
15 outcome of the action herein contained.
16 IN WITNESS WHEREOF, I have hereunto subscribed
17 my hand and affixed my seal this 8th day of December,
18 2005.
19
20
21
22 _____
23 CAREN S. CARLSON
24 Notary Public for Alaska
25 My Commission Expires: 05-30-09

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Barbara Dieckgraeff November 29, 2005

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